MEMORANDUM OF GENERAL COUNSEL MANASCO
STATUS OF FDIC-GUARANTEED BONDS UNDER ALABAMA LAW
JANUARY 9, 2009

Under a new Federal Deposit Insurance Corporation (FDIC) program, the Temporary Liquidity Guarantee Program (Program), certain senior unsecured debt securities that are issued by eligible financial institutions, such as insured U.S. depository institutions and U.S. bank holding companies, which comply with the applicable regulations of the Program and the Debt Guarantee component of the Program are fully and unconditionally guaranteed by the FDIC. (Regulatory Notice 08-75, FINRA.) [1]

Do the FDIC-guaranteed bank bonds, issued under the Program qualify as eligible collateral for the SAFE Program?

The Code of Alabama, §41-14-35 (in pertinent part), describes acceptable collateral for the SAFE Program, as follows:

> (a) All public deposits, as defined in Chapter 14A, of the state shall be secured to the extent and in the manner provided in Chapter 14A by any combination of the following securities and instruments, which may be issued and held in either definitive or book-entry form: Direct obligations of the State of Alabama or any other state of the United States; obligations of the United States government or that are fully guaranteed as to payment of principal and interest by the United States; <u>obligations issued or guaranteed by any agency or instrumentality of the United States</u>, including, without limitation,[2] the Government National Mortgage Association or any successor thereto; any Federal Farm Credit Bank or any successor thereto; the Federal Housing Finance Board or any successor thereto; the Federal Home Loan Bank System or any successor thereto; or any Federal Home Loan Bank or any successor thereto; debt obligations, including, without limitation, participation certificates of the Federal Home Loan Mortgage Corporation or any successor thereto or of the Federal National Mortgage Corporation or any successor thereto; subject to the approval of the State Treasurer and compliance with all related requirements, conditions, and procedures established by the State Treasurer or the Board of Directors of the SAFE Program established under Chapter 14A. (Emphasis added)

As stated, obligations guaranteed by an agency or instrumentality of the United States are permissible collateral for the SAFE Program. The Federal Deposit Insurance Corporation is an agency of the United States, and guarantees the payment of principal and interest of qualified debt instruments issued under the Program. The FDIC will continue to make scheduled interest and principal payments under the terms of the debt instrument through its maturity. The FDIC will become subrogated to the rights of any debtholder against the issuer, including in respect of any insolvency proceeding, to the extent of the payments made under the guarantee.

FDIC-guaranteed bank bonds meet the definition of eligible collateral for the SAFE Program.

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[1] Financial Industry Regulatory Authority
[2] Generally speaking, the "without limitation" terminology is construed to mean a list is not confined or restricted to the listed entries. FDIC is not listed but is included as underlined in the statutory reference to "any agency'

Are the FDIC-guaranteed bank bonds, issued under the Program, sufficiently marketable?

The Code of Alabama, §41-14-35 (in pertinent part), states the following:

> (c) Notwithstanding the foregoing, the State Treasurer is authorized to disapprove any security or instrument offered or pledged as collateral under this section or under any provisions of Chapter 14A of Title 41, including, without limitation, in any circumstance in which the State Treasurer determines that the security or instrument is not sufficiently marketable. (Emphasis added)

FDIC-Guaranteed Senior Unsecured Debt is a TRACE-eligible security if it is registered under the Securities Act of 1933 or issued pursuant to Section 4(2) of the Securities Act and purchased or sold pursuant to Securities Act Rule 144A and otherwise complies with NASD Rule 6210(a)[3] (Notice 08-75)

FDIC-guaranteed bank bonds are sufficiently marketable.

[3] (a) The term "TRACE-eligible security" shall mean all United States dollar denominated debt securities that are depository eligible securities under Rule 11310(d); Investment Grade or Non-Investment Grade; issued by United States and/or foreign private issuers[corporations]; and: (1) registered under the Securities Act of 1933[with the Securities and Exchange Commission] or (2) issued pursuant to Section 4(2) of the Securities Act of 1933 and purchased and sold pursuant to Rule 144A of the Securities Act of 1933. The term "TRACE-eligible security" excludes debt issued by government-sponsored entities, mortgage- or asset-backed securities, collateralized mortgage obligations, and money market instruments. For purposes of the Rule 6200 Series, the term "money market instrument" means a debt security that at issuance has a maturity of one year or less.